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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-1924-2024
Date of Decision: 25.04.2024

SEHDEV ARYA ...Appellant
Versus

NEELAM ...Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARSH BUNGER**

Present:- Mr. Brijesh Kumar, Advocate, for the appellant.

SUDHIR SINGH, J.

The challenge in the present appeal is to the judgment dated 23.02.2024 passed by learned Family Court (Camp Court at Ganaur), Sonipat, whereby the divorce petition filed by the appellant-husband under Section 13 of Hindu Marriage Act (hereinafter referred as ‘the Act’) on the grounds of cruelty and desertion, has been dismissed.

2. The brief facts of the case are that the appellant-husband had filed the aforesaid petition, *inter alia*, averring therein that the marriage between the parties was solemnized on 01.12.2004 as per Hindu rites; that two children (twins) were born out of the said wedlock on 10.02.2012; that from the inception of the marriage, the respondent-wife used to pick up quarrels with the appellant-husband and his parents and would consistently pressurize him to sever his ties with his parents. It was further averred that in 2008 on the occasion of Raksha Bandhan, when the appellant-husband visited her parental house, he had been subjected to humiliation by her parents. Still further, it was stated that despite relocating himself to another village i.e. Dattoli in July, 2010, there was no



improvement in the behavior of the respondent-wife and that even after the birth of the children, she was adamant for living separately from the parents of the appellant, which had caused an immense mental anguish to the appellant and completely shattered his matrimonial obligations as also his obligation towards his parents. It was further stated that in April-May 2017, the appellant had discovered that the respondent-wife had been engaging in intimate conversations on her mobile phone with an unknown person, which indicated infidelity on her part. It was still further stated that the respondent-wife severed her ties with the appellant by withdrawing from his company in April-May 2017.

3. The respondent-wife entered appearance and filed her written statement. The factum of marriage and birth of the children was admitted. However, it was stated that the respondent-wife had been subjected to harassment and beatings on the ground of bringing less dowry and that when she had expressed her inability to fulfill the aforesaid demand of the appellant and his family members, she was subjected to further merciless beatings. It was further stated that in June 2017, the respondent-wife along with minor children was thrown out of the matrimonial house.

4. On the basis of the pleadings of the parties the learned Family Court had framed the following issues:

“1. Whether the petitioner is entitled to a decree of divorce under Section 13 of Hindu Marriage Act, on the grounds mentioned in the petition? (OPP)

2. Relief ”

5. In evidence, the appellant appeared as PW-1 and had examined Mahender as PW-2 and Sh. Shiv Charan as PW-3, besides leading documentary



evidence in the form of Ex.PW-1 to PW-3/1. The respondent-wife, however, did not lead any evidence.

6. The learned Family Court after considering the rival contentions and taking into account the evidence on record, dismissed the petition filed by the husband, holding that neither the ground of cruelty was made out nor that of the desertion.

7. Learned counsel appearing for the appellant-husband has vehemently contended that the respondent-wife did not produce any evidence on record so as to discard the evidence led by the appellant-husband in respect of the cruelty and desertion on the part of the respondent-wife. It is further submitted that there being no counter to the evidence led by the appellant-husband, the learned Family Court fell in error of law and the fact in dismissing the petition filed by the appellant-husband. It was proved on record that the respondent-wife had been indulging herself in the acts, which established infidelity on her part and, therefore, the learned Family Court was not justified in holding that the said allegations were not proved by the appellant. It is yet further submitted that the act of the respondent-wife in leaving matrimonial home time and again, picking up issues on trivial matters with the appellant and his parents and compelling the appellant to move and relocate his family including the old parents, was sufficient to hold that the respondent-wife had treated the appellant and his family members with cruelty.

8. Learned counsel for the appellant further submits that the appellant is serving in the Army and remains posted at various places and the acts of the respondent-wife has caused him cruelty to such an extent that it has become difficult for him to discharge his duties. Thus, a prayer for setting aside of impugned judgment has been made.



9. We have heard learned counsel for the appellant and have also gone through the impugned judgment.

10. The question that arises for consideration by this Court is whether the impugned judgment passed by the Family Court, requires any interference.

11. It is well settled that in order to constitute a cruelty, the party alleging the same must prove on record that the behavior of the party complained against is or has been such that it has made it impossible for the said party to live in the company of the party complained against. The acts of cruelty must be such from which it can be reasonably and logically concluded that there cannot be any re-union between the parties due to the said acts. The cruelty can either be physical or mental or both. Though there is no mathematical formula to devise the extent of cruelty alleged against, yet the facts and circumstances of each and every case must be examined in the light of the gravity contained in them.

12. Much emphasis has been laid by the learned counsel for the appellant-husband that the appellant by way of evidence before the learned Family Court had been able to prove that the respondent-wife was having illicit relations with an unknown person. It was also pleaded that the respondent-wife used to have long conversations on the mobile phone with the said unknown person. However, a perusal of the judgment of the learned Family Court would show that the Pen Drive Ex. P-1 and its transcription was in relation to the conversation between the appellant-husband and his wife during the pendency of the petition and that primarily related to the talks of one time settlement between them. Still further, in respect of the alleged illicit relations, it was found by the learned Family Court that neither the said unknown person had been named nor any call details in respect of the mobile phone of that person or any customer



application form etc. had been brought on record. Thus, it was found that the appellant-husband has failed to establish any kind of illicit relations on the part of respondent-wife. The learned Family Court in this regard, concluded as under:-

“21. The next allegation of petitioner is that the respondent was found talking with some person on phone and she has illicit relations with him. However, even the name of the said person with whom allegedly, the respondent is having illicit relation, has not been disclosed on record. It is quite strange that the petitioner states that the respondent admitted her illicit relation to him in person but till date, he does not know the name of the said person. The petitioner has placed on record some call details but they are of no consequence as it is not proved on record as to the numbers between which the calls are shown to be made belong to whom. The petitioner has failed to place on record the customer application form or any other document, which may reflect as to in whose name, the alleged mobile numbers are registered. Rather in his own cross examination, the petitioner was unable to disclose the mobile number of respondent or even his own mobile number. In the circumstances, the call details are of no relevance at all.”

13. As regards the testimony of PW-2 Mahender and PW-3 Sh. Shiv Charan, it was found by learned Family Court that their testimony did not support the pleadings raised by the appellant-husband in his petition. It was further found that the appellant-husband had pleaded that he had shifted to Village Dattoli due to the conduct of the respondent-wife and in this way he had to leave his ancestral village in the year 2010. However, it was found that it was not only the appellant-husband, but also his parents, who had moved to that village in 2010 and, therefore, there was no substance in the stand taken by the



appellant-husband that he had to relocate himself on account of the conduct of respondent-wife. It was further found that the parents of the appellant were not examined and, therefore, there was no substantial material before the Court to hold that the respondent-wife had neglected or disrespected them.

14. It is well settled that in order to prove the acts of cruelty and desertion, a party alleging the same has to prove it by way of preponderance of evidence. In the instant case, the appellant-husband had failed to prove any of them. Merely because the respondent-wife had to leave the company of the appellant-husband and she is living separately, is no ground to presume that she had committed any cruelty or deserted him in any manner.

15. In Narayan Ganesh Dastane Vs. Sucheta Narayan Dastane, 1975 AIR 1534, the Hon'ble Apex Court held that it is upon the party alleging cruelty to prove that the respondent has treated him with cruelty. The stance of the petitioner has to stand on its own legs and is not entitled to benefit from his own wrong deeds.

16. In Adhyatma Bhattar Alwar Vs. Adhyatma Bhattar Sri Devi, 2002 AIR (SC) 88, it was held that the party alleging desertion must prove that the other spouse was living separately for a period of two years continuously before filing of the petitioner for divorce; there was an *animus deserendi* (firm intention to leave the matrimonial home) on the part of the spouse and element of permanence requires that both the ingredients should continue during the entire statutory period.

17. Thus, we find that the findings recorded by the learned trial Court do not suffer from any patent illegality or perversity. It could not be shown that any evidence has been misread or not taken into consideration by the trial Court.

18. No other point has been urged.

19. In view of the above, we do not find any merits in the present appeal and the same is hereby, dismissed.
20. Pending application(s), if any, shall also stand disposed of.

[SUDHIR SINGH]
JUDGE

[HARSH BUNGER]
JUDGE

25.04.2024
Himanshu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No